BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION

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COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association ("IEP") respectfully submits these comments on the Proposed Decision ("PD") of President Michael R. Peevey mailed on February 8, 2008.

I. COMMENTS ON OVERALL DIRECTION OF THE PD

The PD addresses the point of regulation for purposes of compliance with greenhouse gas ("GHG") emissions standards and bifurcates the points of regulation into two components.

First, the PD employs a traditional command-and-control approach for reducing GHG emissions by reinforcing the existing Renewable Portfolio Standard ("RPS") and energy efficiency ("EE") obligations of Commission-regulated entities **and** proposing to expand these obligations onto non-jurisdictional load-serving entities

("LSEs"). The PD requires all LSEs to be responsible for achieving a minimum level of renewable energy (as defined in existing state law) as part of their overall resource portfolios. Presently, the law prescribes a goal that 20% of California's retail energy sales should be provided by renewable resources by 2010.[1] In addition, the Commission and the California Energy Commission ("CEC") have adopted as part of the Energy Action Plan a goal that 33% of California's energy should come from renewable resources by 2020.

Accordingly, the PD recommends that the California Air Resources Board ("CARB") should impose the following requirements on all LSEs located within the state, including investor-owned utilities ("IOUs"), publicly owned utilities ("POUs"), Community Choice Aggregators ("CCA"), and energy service providers ("ESPs"):

1. A RPS requirement of no less than 20% (leaving for further debate whether CARB would impose a 33% obligation); and
2. An EE standard requiring the LSE to achieve "all cost-effective EE."

Second, the PD employs a "market-based" cap-and-trade approach imposed on points of regulation identified as "deliverers" of power to the California electrical grid. Under this approach, entities that first deliver electricity to the California electrical grid (transmission or distribution) are the point of regulation. This includes electric generators and entities importing power onto the California grid.

Based on its understanding of the "deliverer" approach articulated in the PD and recognizing that many of the details of overall programmatic design remain to be

[1] Pub. Util. Code § 399.11(a).

addressed, IEP believes it could support the PD, subject to the following qualifications:

1. The PD must be revised to address the treatment of existing generators whose contracts do not permit inclusion of allowance costs in the prices they receive for their power;
2. The PD must clarify that generators that have conveyed their GHG attributes and allocations to an LSE are relieved of any obligation to obtain GHG allowances for the underlying "null power";
3. The PD should be revised to clarify who is the "deliverer" when the point of delivery to the transmission system is also the point where title to the power is transferred; and
4. The PD should be revised to remove the exemption of the natural gas sector from the participation in the quest for allowances, cap-and-trade program, and other aspects of its GHG emissions reduction program.

Having stated the concerns related to the PD as presently drafted, IEP notes some positive features of the PD:

- The PD ensures that the state's RPS and EE programs remain grounded in the procurement practices of the LSEs;
- The PD addresses leakage issues by creating the means (*i.e.,* the "deliverer" as the point of regulation) to ensure that imports and undifferentiated power are treated comparably to power generated in-state from a GHG emissions reduction compliance perspective; and
- The PD provides a structure that most enables linkage to anticipated regional, national, and international trading schemes.

In addition, IEP supports the following design elements of the PD:

- Utilizing a multi-sector cap-and-trade mechanism for attaining compliance;
- Employing an allowance-based system for establishing the cap on GHG emissions;
- Auctioning some portion of the allowances (to be determined);
- Using the proceeds from the auction to "benefit electricity consumers in California"; and
- Establishing a system for flexible compliance, including the rule that the points of regulation would be required to relinquish (*i.e.,* retire) allowances at the end of the compliance period.

Finally, IEP finds that the PD is well reasoned and thoughtful on the following issues that are critical to the program's success:

- The PD recognizes that the cap-and trade market is likely to increase the price of electricity in wholesale markets. The PD's stated goal is to have the price effect be "transparent to and consistent for all participants, without any distortionary impact." (PD, p. 61.)
- The PD articulates a belief that the "deliverer" approach is consistent with federal law and minimizes the need for complex tools to account for or track imports. (PD, p. 60.)
- The PD recognizes that out-of-state entities delivering power into the California grid and participating in CAISO markets would be expected to integrate GHG allowance costs, if any, into bids. (PD, pp. 63-64.)
- The PD protects against leakage by recognizing that all power with GHG emissions is subject to compliance requirements under the deliverer approach, except power that is wheeled through California and small generators not subject to CARB's reporting thresholds. No other exemptions are provided, and there are no blanket exemptions for renewables or combined heat and power ("CHP"). (PD, p. 66.)
    - One exemption of sorts is provided for federal entities not subject to state law. The power delivered by these entities for use in California would become subject to "point of regulation" compliance obligations once the federal power is handed over to any entity subject to state law.

II. COMMENTS ON SPECIFIC TOPICS

IEP recognizes that the PD defers to a later decision many of the implementation details of the deliverer approach – the very details that may well validate or invalidate the commercial practicability of this policy decision – and IEP's remaining comments are limited to three narrow topics:

1. Treatment of existing generators whose contracts do not permit inclusion of allowance costs in power prices;

2. Need to clarify that generators that have conveyed their GHG attributes and allocations to an LSE are relieved of any obligation to obtain GHG allowances for the underlying "null power";
3. Clarification as to the entity deemed to be the deliverer; and
4. Exemption of the natural gas sector from participation in the quest for allowances and other elements of the GHG emissions reduction program.

Each of these topics is discussed below.

A. Treatment of existing generators whose contracts do not permit inclusion of allowance costs in power prices

The PD takes numerous opportunities to expresses its recommendation to distribute some, if not all, of allowances available to the electric sector through an auction.

> With these impacts in mind, we recommend that at least some portion of the emission allowances available to the electricity sector should be auctioned. We make this recommendation in order to promote liquidity in the emission allowance market, improve the accuracy of emission allowance prices as a reflection of marginal emission reduction costs, improve investment incentives, avoid windfall profits at consumer expense, and allow new market entrants easy access to allowances. (PD, p. 6.)

> Based on further analysis, we may recommend, for example, that allowances should be distributed entirely by auctions, or alternatively using a mix of auctions and free allocations which may transition over time to a system of greater reliance on auctions. (PD, p. 7.)

> Impacts on entities with compliance obligations and on customers would depend on the use that is made of auction proceeds. A major difference between auctioning and free distribution of allowances is that auction proceeds could be used to benefit consumers directly by rate mitigation or indirectly by providing funds for investments that would

> reduce GHG emissions and avoid the need for future allowances. By contrast, free allocations could result in windfall profits to deliverers. For these reasons, and in light of the potential benefits of increased market liquidity on allowance prices, we conclude that auctioning of at least a portion of the allowances is superior to free allocations in terms of reducing costs to consumers of achieving GHG emission reductions. (PD, pp. 84-85.)

In the past, particularly in the context of implementing an auction-based allowance GHG program such as envisioned in the PD, IEP has voiced concern that many generators would face a commercially untenable set of circumstances if they were required to purchase, through auction or other means, allowances for their GHG emissions. These circumstances occur when a generator has an *existing* contract with an LSE and the contract provides no means for the generator to recover the costs of newly imposed GHG compliance obligations, because the parties at the time the contract was negotiated did not contemplate that these costs would be imposed on the generator. For example, the generator's underlying PPA might contain pricing terms that reflect either fixed prices or fixed formulas and thus the generator has no ability under the contract to recover allowance costs in the price for power as specified in the contract.

The PD correctly recognizes that power market prices are likely to reflect allowance costs (PD, p. 84); however, the generators of concern to IEP here do not have the ability to avail themselves of market-clearing prices reflecting the costs of GHG emissions reduction compliance. These generators include QFs with fixed-price or fixed-heat rate contracts and renewable energy providers that have secured power sales

agreements with utilities through renewable auctions.[2]

While the details of the method of dealing with this population of generators may be left to further chapters of this proceeding, the PD should be revised to expressly recognize this situation and state the intention to provide a solution that will allow these generators to continue to provide reliable power to their LSE counterparties. This issue potentially affects up to 10,000 MW of QF power (cogeneration and renewable) for the duration of their existing contracts. Not clearly addressing this issue now would impose a substantial level of unnecessary and unwarranted business risk for resources that play a significant role in (a) maintaining grid reliability, (b) attaining the California RPS, and (c) fostering clean, heat and power operations.

B. Clarification that generators that have conveyed their GHG attributes and allocations to an LSE are relieved of any obligation to obtain GHG allowances for the underlying "null power"

The PD establishes that the "point of regulation" includes all generators that deliver energy to the distribution or transmission system in California, except for power that is wheeled through California. The PD explicitly includes renewable

[2] IEP has previously raised the issue of generators that are unable to recover the costs of GHG compliance, including generators on fixed price/fixed formula contracts and generators operating under tolling agreements. For generators under existing tolling agreements, the PD apparently tried to identify the deliverer as the "entity that is responsible for the electricity . . . **on the portion of the physical scheduling path** where it is first delivered to the to a point of delivery on the transmission path within California…" (PD, at p. 67, emphasis added.) This formulation does not entirely address the deliverer in tolling agreements. For example, if under a tolling agreement title to the power passes on the high side of a transmission-level transformer, the point where title passes, where power is delivered to the transmission system, and the physical scheduling path may all be the same point. IEP suggests that a simpler rule would be the PD's statement that "the owner of the power at the point of delivery to the California grid usually would be . . . an entity that has a tolling arrangement with the generator." (PD, p. 67.) The PD is also silent on the dilemma faced by other generators with contracts that do not afford a reasonable means for cost recovery if they are deemed the "deliverer."

generators.[3] However, this requirement is problematic for renewable generators that deliver power to LSEs subject to the Commission-approved standard terms and conditions for RPS contracts. The standard terms and conditions prescribe that the renewable generator deliver all "environmental attributes" to the LSE, including "any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) … and … the reporting rights to these avoided emissions" are required to be conveyed to the purchasing utility.[4]

This required conveyance essentially strips the renewable generator of its GHG attributes and results in the generator being perceived as delivering "null power" (*i.e.,* system power) to the grid. As presently drafted, the PD would require this renewable generator, a relatively low or zero emitting resource, to acquire allowances to cover its power generation as if it were a fossil-based resource. In addition to creating a nonsensical outcome (*e.g.,* zero emitting resources having to enter the market for GHG allowances to cover their generation), it would have the effect of needlessly increasing the cost of renewable generation, in contradiction to the Commission's policy.

The PD should be revised to state that renewable generators that have conveyed their GHG attributes and allocations to an LSE are relieved of any obligation to obtain GHG allowances for the underlying "null power."

C. Clarification as to the entity deemed to be the deliverer

The PD recommends that the appropriate point of regulation for the electric

[3] PD, p. 66.
[4] D. 04-06-014, Appendix A, p. A-2 [STC 2].

sector is the "deliverer." The deliverer is defined as:

> the entity that is responsible for the electricity either (1) on the portion of the physical scheduling path where it is first delivered to a point of delivery on the transmission grid within California or (2) where the generator's facilities are interconnected to the distribution system in California. Recognizing that electricity is an instantaneous commodity, we deem that the party with responsibility for power at the point where it is delivered to the California grid to be the owner, or "deliverer," of the electricity at that point for purposes of establishing GHG responsibility. (PD, pp. 65-66.)

This definition is ambiguous, and the PD should be revised to clarify this definition of the point of regulation. The following example illustrates IEP's confusion.

The typical configuration of a QF is that it generates electricity at its power plant, using either renewable resources or natural gas for qualifying cogeneration facilities, and that electricity runs through a revenue meter that is typically defined as the point where title to that power transfers to the utility counterparty. The revenue meter can be located either on the "low-side" of the transformer required to transform the power from generation voltages to distribution or transmission voltages (in which case the QF's delivered energy and revenues are adjusted for transformation losses), or on the "high-side" of the transformer (in which case the QF absorbs transformation losses before the power is measured at the meter). In either case, that power is owned by the utility counterparty before it ever is delivered to the California grid. Indeed, in the case of QFs, the utility counterparties act as scheduling coordinators and schedule that power onto the grid. In most cases of which IEP is aware, QF power becomes the property of the utility counterparty before it ever touches the grid.

IEP's reading of the first subsection of the PD's definition of deliverer appears to indicate that the utility counterparty to the QF contract is responsible for the compliance obligation for any GHG emissions associated with that power, since it is the owner of, and responsible party for, the electricity on the portion of the physical scheduling path where it is first delivered to a point of delivery on the transmission grid within California. This interpretation of that definition seems logical.[5] Further, this interpretation has the additional benefit of resolving the issue of how best to handle electric generators operating under existing contracts for which a reasonable means of GHG compliance cost recovery is not available, at least as it pertains to QF operations.

IEP's confusion stems from the second provision of the definition that seems to suggest that a generator is responsible for GHG compliance simply by virtue of physical interconnection with the grid (at the distribution level). The PD should be revised to clarify this ambiguity to make clear that in the situations described immediately above, the utility counterparty is the entity responsibility for GHG compliance.

D. Exemption of the natural gas sector from participation in the quest for allowances

IEP is disappointed that the PD has recommended giving an exemption to

[5] If the Commission confirms IEP's interpretation of this definition of deliverer, many, but not all of the issues raised in IEP's previous comments on this PD are resolved. IEP still believes that the challenges that this PD poses for non-QF renewables with contracts earned through the renewable auction process that do not allow for pass through of GHG regulation costs must be dealt with by the Commission in its decision. This clarification is especially critical in light of the Commission's intention to increase the renewable share of the overall utility resource mix.

the natural gas sector when it comes to shouldering its fair share of the burden for meeting the GHG reduction goals established by AB32.

The PD frequently alludes to the liquidity benefits derived from auctioning allowances. IEP thinks that these benefits would be amplified through broader, perhaps even multi-sector, auctioning (if auctioning is ultimately chosen as the method of allowance distribution) and recommends revising the PD to include the natural gas sector in the cap-and-trade market. Indeed, exclusion of the natural gas sector seems to conflict with the PD's recommendation to enact a multi-sector cap-and-trade mechanism (PD, p. 3.)

III. CONCLUSION

As noted above, the PD's approach provides many advantages, including (a) recognizing the importance of maintaining procurement rules for jurisdictional entities that incorporate existing state law such as the RPS and EE, (b) minimizing leakage, and (c) providing linkage to broader market structures anticipated to arise in the near future.

IEP's support, however, for the general approach described in the PD is conditioned by the need to improve the PD, clarify its intent, and ensure better programmatic design in at least three areas. Specifically, the PD should be revised to:

- Explicitly address the treatment of generators operating under existing contracts that do not afford a reasonable means for recovering the cost of GHG compliance;
- Clearly state that renewable generators that have conveyed their GHG attributes and allocations to an LSE are relieved of any obligation to

obtain GHG allowances to match the underlying "null power."

- Clarify who is the "deliverer" when the point where ownership of power transfers is point of delivery to the transmission system; and
- Adopt a true multi-sector approach by explicitly including the natural gas sector in overall program design.

Respectfully submitted this 28th day of February, 2008 at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 28th day of February 2008 caused a copy of the foregoing

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION

to be served on all known parties to R.06-04-009 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of February 2008 at San Francisco, California.

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